



Minutes of the January 26, 2022 Meeting of the
Commission on Governmental Ethics and Election Practices
45 Memorial Circle, Augusta, Maine

Present: Dennis R. Marble and William J. Schneider, Esq.

Via Zoom: William A. Lee III, Esq.; David R. Hastings, Esq.; and Sarah LeClaire, Esq.

Staff: Jonathan Wayne, Executive Director; and Jonathan R. Bolton, Assistant Attorney General.

Commissioner Lee convened the meeting at 9:05 a.m. The meeting was livestreamed via YouTube.

The Commission considered the following items:

1. Ratification of the Minutes of the October 29, 2021 Meeting

Mr. Marble moved to adopt the minutes as presented. Mr. Lee seconded the motion. Motion passed 5-0.

2. Request by State Rep. Jonathan Connor to Participate in Maine Clean Election Act Program for State Senate

Request Withdrawn

3. Staff Update on Investigation of ALEC CARE Software

Mr. Wayne provided an update on the investigation, which the Commission had directed in September 2021. The issue under investigation is whether the provision of software (ALEC CARE) by the American Legislative Exchange Council (ALEC) to its members violated the contribution limits for legislative candidates. The Commission staff wrote to ALEC's attorney requesting an opportunity to examine the ALEC CARE software and an interview of an ALEC employee. ALEC stated it could not commit to voluntarily cooperate with the investigation due to ongoing concerns about its legitimacy. Mr. Wayne said staff had examined screenshots to try to understand the software and interviewed a legislator who is cooperating with the Center for Media and Democracy (CMD) on its complaint. Finally, the staff contacted Voter Gravity about obtaining a demonstration of its software. The company also declined to cooperate. Mr. Wayne outlined three options that he saw for the investigation: 1) subpoena ALEC for the software; 2) have staff review the information available and report back to the Commission with any recommendations of findings of violation; and 3) take no further action.

Mr. Lee said he thought it would be helpful if the staff followed up with other states to see how their investigations were handled. Mr. Hastings said that, while the software may be used for dual purposes, ALEC requires an agreement with its members that they will not use the software for campaign purposes. Mr. Marble expressed concern that ALEC has been uncooperative with the investigation and that CMD was relying on a single source for its complaint. He said he was interested in receiving more information but agreed that issuing subpoenas would only delay the process. Mr. Schneider said he believed the investigation was ill-advised and should be suspended because the investigative standard requires evidence of a possible violation. He said he cared about the independence of the Commission and did not believe it should be used as a political tool. Mr. Lee said there was no legal requirement for something of value to be accepted by a candidate to qualify as a contribution. He said he believed it was worthwhile to follow up with other states about their investigations.

Mr. Lee moved to ask the Commission staff to continue to attempt to obtain the contents of the ALEC CARE software, review it and report back to the Commissioners with the results. Ms. LeClaire seconded the motion. Motion passed 3-2 (Mr. Hastings and Mr. Schneider opposed).

4. Updates on Investigative Subpoenas

Mr. Wayne explained that at the June 11 and 18, 2021 meetings, Clean Energy for ME (d/b/a Stop the Corridor) raised objections to document requests in a March 2021 subpoena. After the Commission upheld the subpoena with one modification, Clean Energy for ME initiated a legal appeal of the Commission's decision with respect to two of the categories of documents. The appeal was not successful in the Superior Court. Mr. Bolton said he had just been informed that Clean Energy for ME would not appeal the Superior Court decision.

Executive Session

Mr. Lee moved to go into executive session pursuant to 1 M.R.S. § 405(6)(E) to discuss pending or contemplated litigation with Commission counsel. Mr. Hastings seconded the motion. Motion passed 5-0. When the Commission came out of Executive Session, no further business was warranted.

Adjournment

Mr. Hastings made a motion, seconded by Mr. Schneider, to adjourn. The motion passed. The meeting adjourned at 10:25 a.m.

Respectfully submitted,
/s/ Jonathan Wayne
Jonathan Wayne, Executive Director